

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 20621 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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**BABLIBEN, D/O. PARBHUBHAI MAKANBHAI KOLI PATEL - Petitioner(s)****Versus****COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)**

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**Appearance :**

MS BANNA S DUTTA for Petitioner(s) : 1,  
Mr. L.R. Pujari, AGP, for respondents

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA****Date : 20/12/2005****ORAL JUDGMENT**

1. Babliben, daughter of Parbhubhai Makanbhai, petitioner, has filed this petition challenging the order dated 9.9.2005 passed by the Police Commissioner, Surat City, under the provisions of Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA Act". This petition was filed on 6.10.2005. This Court has issued rule on 11.10.2005.

2. On behalf of the respondents Mr. L.R. Pujari, learned A.G.P., appears. He has filed affidavit-in-reply on behalf of the respondents. Therefore, with the consent of parties, the matter is

taken up for final hearing.

3. Ms. Banna Dutta, learned advocate for the petitioner, has invited my attention to the order of detention dated 9.9.2005 passed under the provisions of PASA Act. The learned counsel further submitted that the order of detention was passed on 9.9.2005. However, the petitioner was actually detained on 1.10.2005. The learned counsel has invited my attention to the grounds of detention furnished by the authorities. The said grounds provide only an offence committed on 14.6.2005 under the provisions of the Bombay Prohibition Act that he was storing 1045 foreign liquor bottles valued at Rs. 31,350/-. It is also alleged that the petitioner is a bootlegger.

4. In view of the grounds stated in the order of detention, the learned counsel for the petitioner submitted that though the petitioner is a bootlegger, there is no violation of public order and therefore the authority could not have passed the order of detention. In support of the same, the the learned advocate for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of MUSTAKMIYA JABBARMIYA SHAIKH VS. M.M. METHA, COMMISSIONER OF POLICE AND OTHERS reported in 1995(2) GLR 1268.

5. On behalf of the respondents Mr. L.R. Pujari, learned AGP, appears. He has tried to defend the order of the authority. He has relied on the

affidavit in reply filed by Sudhir Sinha, Commissioner of Police, Surat City. In the said affidavit it is stated that the case of the petitioner-detenu falls within the definition of "boot-legger" as defined in Section 2(b) of the PASA Act. It is further stated that on carefully scrutinising, examining and considering the material placed before the authority including the papers pertaining to the above cases and after applying the mind to the facts of the case and perusing all relevant documents placed before it, the authority passed the order of detention and this Court may upheld the order of detention.

6. I have considered the submissions made in this behalf. In view of the judgement of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh (supra) as well as Division Bench judgement of this Court in the case of A.J. Solanki Vs. Police Commissioner, Surat (supra), the petition is required to be allowed. There is no proper satisfaction arrived at by the authority. The learned counsel is right in her submission that even if the offences which have been committed by the petitioner that violates only "law and order" and "not public order" as envisaged by the Apex Court as well as Division Bench judgement of this Court and therefore the authority has not considered the material aspect. The material which has been set out is not adequate to pass the detention order.

7. In view of the above, in the result, the petition is allowed. The impugned detention order dated 9.9.2005 passed by the Police Commissioner, Surat, is quashed and set aside. The detenu- Babliben , d/o. Parbhubhai Makanbhai Koli Patel is ordered to be set at liberty forthwith if she is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M. MEHTA, J)

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